United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1730

To be argued by:
Clement J. Kichuk
Assistant Attorney General

B

P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CITIZENS FOR BALANCED ENVIRONMENT AND TRANSPORTATION, INC., successor in interest of Committee to Stop Route 7, et al,

Plaintiffs-Appellants

v.

JOHN A. VOLPE, et al,

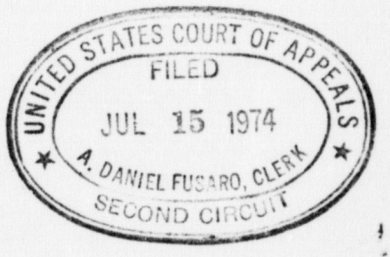
Defendants-Appellees

CIVIL DOCKET
DOCKET NO. 74-1730

On Appeal from District Court of Connecticut
Newman, J.,
Docket 15,054

APPELLEES' BRIEF

ON APPEAL



July 12, 1974

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II.

STATEMENT OF THE CASE

A.

Nature of the Case

Plaintiffs-Appellants, Citizens for Balanced Environment and Transportation, Inc., et al (called CBET) and certain individuals seek to enjoin certain officials of the Connecticut Department of Transportation (CONNDOT) from constructing 4.7 miles of a relocated U.S. Route 7 limited-access highway running north from Danbury, Connecticut to Brookfield, Connecticut (relocated and present Route 7 shown on Plfs' Exh. HHH).

CBET contends that this new length of proposed highway construction is a "federal action" within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 et seq., (NEPA), because (1) some federal funding had already occurred; (2) the State maintained eligibility for future federal funding; and (3) because of the relationship between the portion of relocated Route 7 north of Danbury and the portion of Route 7 south of Danbury now under an injunction, (Committee to Stop Route 7, et al v. Volpe, et al, 346 F. Supp. 731, 742 (D. Conn. 1972)).

On May 10, 1974, the United States District Court of Connecticut by Hon. Jon O. Newman, denied the plaintiffs' motion to extend the scope of the original injunction, and ruled that NEPA was not applicable since the proposed construction of relocated Route 7 from Danbury to New Milford was not a "federal action".

B.

Course of the Proceedings

1. Prior Proceedings

This is the second phase of the Route 7 litigation in Connecticut. In the first phase of this litigation, CBET's predecessor and other individuals filed suit under NEPA and other statutes to enjoin construction of a proposed limited access highway relocation of U.S. Route 7 from Norwalk, Connecticut to New Milford, Connecticut. The Court, Newman, J., enjoined construction from Norwalk to Danbury until such time as an environmental impact statement (EIS) has been prepared by federal officials according to the provisions of § 102(2)C of the National Environmental Policy Act, Committee to Stop Route 7, et al v. Volpe, et al, 346 F. Supp. 731.

Shortly thereafter CONNDOT sought to amend or modify the judgment on several points and interalia requested a ruling that the judgment specify that the construction of new Route 7 between

Danbury north to New Milford will not require an EIS, (Ruling on Motions to Amend Judgment, p. 5), F. Supp. , 4 E.R.C. 1681, (D. Conn. Sept. 6, 1973). The Court declined to rule and explained why it declared "that issue is not ripe for adjudication at this time", (Ibid p. 5).

CONNDOT advertised for bid 4.7 miles of the proposed relocated Route 7 from Danbury north to Brookfield on November 21, 1973 (Projects 34-124 and 18-95, Plf. Exh. V). CBET then filed its "Motion to Extend the Geographic Scope of Injunction".

2. Disposition in Court Below

On January 29 and 30, 1974 the District Court heard the matter including oral testimony of state officials and experts presented by all the parties with accompanying exhibits and affidavits. By agreement with the Court, the issue was limited to the determination of whether the proposed construction of relocated Route 7 from Danbury to New Milford was a "federal action" within the meaning of NEPA. While there was no active participation in the trial by and on behalf of the federal defendants, the Court requested that the federal defendant Secretary submit an affidavit of his views on this issue, (Tr. p. 24). In compliance with this request, the United States Government secured and submitted the affidavit of Lester P. Lamm, (Defs' Appendix, p. 1).

On May 10, 1974, the Connecticut District Court, Newman, J., decided that "since the Danbury-New Milford portion is deemed not to be a 'Federal action', an EIS for this specific portion need not be prepared prior to construction of the projects challenged by this motion to extend the prior injunction. Accordingly, that motion is denied." (See page 14 of the Opinion in Plfs' Appendix, p. 25).

A motion for an injunction pending appeal was denied by the District Court, Newman, J., on June 12, 1974 and by this Court on June 25, 1974.

C.

STATEMENT OF FACTS

1. Route 7 before Relocation

For many years prior to 1962, there existed a transportation corridor within the City of Danbury, containing state routes No. 7, No. 6 and No. 202, (Tr. p. 165, D. Johnson). In 1962, in order to provide an improved transportation system and to minimize the impact of this overlap construction on the Danbury city area, (Tr. p. 164), Route I-84 was constructed embracing for a distance of approximately 2.9 miles, (Tr. p. 253) the same transportation corridor, (Tr. p. 164). In 1962, Route I-84 was constructed and completed with participating federal funds. As part of the same I-84 construction in 1962, two bridges, a stub end of Route 7 and ramp connections were built, (Tr.

p. 69, Siccardi). This construction provided a connection to the then existing Route 7 and anticipated a possible reconstruction of Route 7 so that if it were to be uitimately reconstructed, further disruption of traffic on the I-84 corridor would not be necessary, (Tr. p. 62, Siccardi). The ramps would be necessary for allowing I-84 traffic to enter and leave existing Route 7, (Tr. p. 64), but would have to be removed if Route 7 were to be reconstructed. Removal of the ramps is necessitated by the fact that traffic geometry in this area will result in a very dangerous weave of traffic in the intersection area, (Tr. p. 162, Johnson). A sufficient distance must be provided for high speed traffic to move onto the roadway, merge with existing traffic and prepare to exit from the highway without creating a need for panic movement to leave the expressway. This connection with existing Route 7 and potentially the reconstruction of Route 7 is part of the general program of interconnecting I-84 with the existing state highway system.

2. Relocation of Route 7

In 1959 or 1961, the General Assembly directed the Connecticut Highway Department to study the need for reconstruction of Route 7 from Norwalk to the Massachusetts state line. This study was done in 1962 and reported back to the General Assembly in 1963, (Tr. p. 255).

Any highway construction program must find justification on the basis of need for its existence and capability of financing. Highway construction programs are broken down into manageable sizes or lengths which can be readily built by contractors and financed by the department, (Tr. p. 281, Koch).

The traffic study by the state in 1962 indicated no need to reconstruct the existing Route 7 in its entirety north of New Milford, (Tr. p. 255, Koch). This decision has remained unchanged since then due to a constant low traffic volume observed and counted at the Kent control station on Route 7 since 1964 to date, (Tr. p. 181, Johnson), (Tr. p. 256, Koch). The traffic study further indicated a need for a length of highway connecting Norwalk and Danbury.

The major justification for the Danbury-New Milford highway project was found in its service to local needs - (traffic flow within the urban and town areas). The next greatest need was found to be a semi-local service, i.e. traffic flowing from outside the city or town area to inside the city or town area, (Tr. pp. 172-174, D. Johnson). The least important need was for vehicular traffic utilizing the entire length of corridor in one trip.

If the highway from Norwalk to Danbury were relocated or not built at all, a separate need would still exist for the construction

of Route 7 from Danbury to New Milford, (Tr. pp. 169-170, 174). The same would be true as to the Norwalk to Danbury segment if the Danbury to New Milford segment could not or would not be built, (Tr. pp. 172-4).

Relocated Route 7 from Norwalk to Danbury has its own independent function and need for existence, (Tr. pp. 253-254). So too, relocated Route 7 from Danbury to New Milford has its own independent function and need for existence, (Tr. pp. 253-254).

3. Federal Funding

The two projects between Danbury and New Milford under attack by the appellants, 34-124 and 18-95, were initiated by CONNDOT in 1965, (Tr. p. 238). Connecticut Department of Transportation does not now and did not then intend to use federal aid funds on these projects, (Tr. pp. 211, 238, 265. See Defs' Exh. 76, Defs' App. p. 16). Federal funds expended for the Route I-84, Route 7 interchange, constructed in 1962-1963, was so constructed essentially as part of I-84. It connected I-84 with the existing Route 7, northward, and was made compatible with a proposed relocated Route 7, (Lamm Affid, Defs' App. p. 5).

The only federal funds ever used by CONNDOT on the projects in question were highway planning and research funds. The use of

planning and research funds by Connecticut Department of Transportation on the part of this route is wholly consistent with the State's resolution to seek no federal funding on the highway project itself. This is often done. An application for planning funds is wholly independent of the Federal - State partnership on a particular highway project, (Lamm Affid, Defs' App. p. 3). It should be noted that these funds were so utilized prior to the adoption of NEPA, (Tr.pp. 295-297).

4. CONNDOT Eligibility for Future Federal Funding

CONNDOT had been following a pattern of procedure with all state projects which satisfied the requirement of eligibility for federal funding. CONNDOT followed this same pattern of procedure for the construction of the project in issue, (Tr. p. 211). This was a unilateral observance by the State of Connecticut of hearing requirements which mirror federal requirements, for whatever purpose, without a reciprocal federal commitment in the form of some approval, (Lamm Affid, Defs' App. p. 4).

The highway project north of I-84 is not to be a federal project, nor a part of a federal project by the Federal Highway Administration. It is a project, financed wholly without federal funds, now proceeding to the construction stage without federal approval, (Lamm Affid, Defs' App. p. 2).

As a condition to federal funding, program approval is required by 23 U.S.C. § 105 and 23 C.F.R. § 1.8. CONNDOT has never requested FHWA to program any portion of Route 7 north of the I-84 interchange for federal funding, except for the use of federal planning and research funds and federal funds contributed to the construction of I-84, (Siccardi Affid, Defs' App. p. 9).

5. System Revision Approval

In the course of this litigation, there has been much commentary concerning the difference between "systems approval" (or what Judge Newman refers to as "Route Revision Approval", See Op. p. 7) and "location approval". On November 28, 1969, Connecticut Department of Transportation asked for approval of a system revision in Route 7 between Wilton and North Canaan, Connecticut, (Tr. p. 80). In his affidavit (Defs' App, pp.11 to 13), Siccardi explains the procedures required for "system revision approval". The State Highway Agency initiates route selections and proposed changes in routes already designated. The system revision includes a brief description of the route, a map and a discussion as to why the system revision is required. The federal agency is only concerned with maintaining the integrity of the system and not with granting engineering approval of the proposed change. Lester P. Lamm, Assistant Federal Highway

Administrator, explains "system approval" more fully in his affidavit, (Defs' App. p. 3). Maps showing a detail of 1" equals one mile are sufficient. For "location approval", much more study and greater detail are required. Engineering appraisal is made and maps showing a detail of 1 inch equals 250 feet are required. Major features of alternatives must be defined and public hearings must be held. Requirements of NEPA must be satisfied. While "system revision approval" should be obtained prior to <u>any</u> state construction or reconstruction on a federal system highway, location approval is <u>not</u> required unless federal funding may be sought, (Lamm Affid, Defs' App.pp. 3, 4). While Siccardi indicated that failure to obtain "system revision approval" would preclude any further expenditure of federal funds on the change, (Tr. p. 88), he did not establish that such approval was equivalent to "location approval". In his affidavit (Defs. App.pp. 13-14), Siccardi clearly distinguishes "system revision" and "location approval" requirements.

III

A R G U M E N T

Summary

The controlling issue before this Court is whether or not the portion of relocated Route 7 from Danbury to New Milford is a "Federal action" within the meaning of NEPA. In determining whether or not the project is a "Federal action" the Court must analyze (a) Federal funds already committed to the project, (b) the effect, if any, of the State's eligibility for future Federal funding, and (c) the relationship between this project and the portion of Route 7 south of Danbury. The Court below carefully analyzed each of these factors, after hearing detailed evidence presented by both parties, and reached the conclusion that the project in question was not a "Federal action" and therefore was not subject to the provisions of NEPA.

A. COMMITMENT OF FEDERAL FUNDS

In determining whether or not a highway project should be deemed a "Federal action" within the provisions of NEPA, case law is in agreement that the prime indication of "Federal action" is the approval and commitment of Federal funds to finance the project. James River & Kanawha Canal Parks, Inc. v. Richmond, 359 F. Supp., 611 (E.D.Va. 1973 at p. 628) affd. per curiam 481 F.2d 1280 (4th Cir. 1973), (hereinafter referred to as James River); also see

Indian Lookcut Alliance v. Volpe, 484 F. 2d 11 (8th Cir. 1973) at p. 16; LaRaza Unida v. Volpe, 337 F. Supp. 221 (N.D.Cal. 1971) at pp.225-226.

Contrary to plaintiffs' contentions, sufficient Federal funds have not been approved, committed or even requested for the project in question so as to classify it as a "Federal action." The Four Hundred Sixty-five Thousand ($465,000.00) Dollars of "Federal-aid primary" money expended on the bridge, spur and ramps, which will be the southern terminus of the project, was not spent on this project, but was committed in 1962-1963 as part of the construction of the new highway I-84. (See supra p. 5-6).

As Judge Newman pointed out in his opinion at pages 4 and 5, roads are required to link up with other roads and it was obviously necessary to construct a means of connecting the new I-84 with the then existing Route 7. The spur and temporary ramps were found by the Court to have a use entirely independent of any future use they might serve at the southern end of new Route 7 above Danbury.

Plaintiffs, at pages 15 and 16 of their Brief, have made reference to over Forty Million ($40,000,000.00) Dollars of Federal interstate money. These funds again were totally unrelated to the project now in question, but were committed in 1962-1963 to the construction of I-84 which was financed with participating funds.

As found by the Court below the only Federal funds actually committed and spent on the project now in question are less than Fifty Thousand ($50,000.00) Dollars of Federal highway planning and research funds. (Opinion p.5). The Court concluded that size of expenditure and the totally preliminary purposes of the funds are

too insignificant to render a proposed multi-million dollar highway project a "Federal action". Citing James River supra, pp. 634 and 636 (n.72).

B. ELIGIBILITY FOR FUTURE FEDERAL FUNDING

Once it has been determined that insufficient Federal funds have been committed to a project to classify it as a "Federal action", other factors may involve the Federal Government to such an extent that the imprimatur of a "Federal action" should be imposed. One such factor discussed in some of the cases is the degree of involvement by the State in maintaining the project's eligibility for Federal funding.

The defendant would argue that (a) eligibility for Federal funding by itself is not sufficient to classify a project as a "Federal action", and (b) in any event the affirmative steps required in those cases recognizing the eligibility doctrine are totally missing in the case at bar.

Eligibility alone is not sufficient.

(a) Judge Newman, at pages 5 through 10 of his opinion, carefully analyzes those cases which equate eligibility with "Federal action". He points out that the leading case for this theory is LaRaza Unida v. Volpe, supra, a decision of the Northern District of California. That holding is cited with approval by two cases: Sierra Club v. Volpe, 351 F. Supp. 1002 (N.D.Cal. 1972), which was decided by the same District Court and which was in fact a "segmenting" case, and James River, supra, which supported the

doctrine in principle but held it inapplicable to the facts before that Court.

This Court must first address itself to Judge Newman's conclusion that:

> Solicitude for the environment cannot substitute for legislation. Congress has not applied NEPA to all highways that are eligible to fund with Federal dollars. (Opinion p.9).

While no one can disagree with the importance of the legislation embodied in NEPA and its significant social and environmental purposes, Congress did not pass a statute applying to all roads or highway projects which might be considered a "major Federal action". The legislation is limited to projects which factually are "major Federal actions", and the defendant would maintain that the Court in LaRaza Unida v. Volpe overextended the application of the statute.

In our case Judge Newman considered all the facts carefully and faced the issue squarely in asking "whether NEPA compliance is required for a span of a relocated highway that has received FHWA approval to remain on the federal-aid primary system when state highway officials have taken all steps necessary to remain eligible for federal funding but have elected to use only state funds for construction." His reply to this issue is that "Though recognizing the force of the argument developed in LaRaza Unida, this court concludes that while Congress no doubt has power to require NEPA compliance in such circumstances, the existing legislation simply does not do so." (Op. p. 8-9). The court agreed with LaRaza Unida that the contentions expressed therein not favoring retention of an option by state officials were reasonably sound but could not understand how such contentions

established that such an option on the part of the State constitutes the highway a "Federal action" within the meaning of NEPA. (Op. p. 9). Affirmative steps required for eligibility doctrine are totally missing.

(b) The facts of the case before this Court are very similar to those in James River and should mandate a finding that the LaRaza Unida principle does not apply. The only Federal involvement in this portion of the re-located Route 7 from its very conception was the commitment of regional planning funds which was also a factor present in the James River case. There was never any attempt by the State of Connecticut Department of Transportation to seek Federal funds for this project and there was none of the aspects of the "Federal-State partnership" so evident in cases such as Sierra Club v. Volpe, supra, which would be at least evidence that Federal funds were to be sought.

Most significantly, the all-important "location approval" used by the Court in LaRaza Unida v. Volpe, supra; Sierra Club v. Volpe, supra, and other cases, was never requested or received by the State. While plaintiffs persistently attempt to equate "location approval" with "route revision approval" as pointed out in pages 25 through 27 of their brief the equation cannot properly be made. "Route revision approval" is not a substitute for "location approval" and is not evidence of an affirmative step to seek federal funds. (See Judge Newman's Opinion, page 8 Siccardi affidavit Defs' appendix p. 12 and Lamm Affid. Defs' app. p. 3).

The State of Connecticut Department of Transportation applied for "route revision approval" because the project in question was already in the Federal Aid Highway System and not because federal funds were sought or planned for the project. In the same manner, location and design hearings were held, not

for the purpose of obtaining or in anticipation of funds from the Federal government, but because such hearings were required by either State statute or general procedures followed in all highway construction projects by the Connecticut Department of Transportation. (See page 9 supra). The Court, in James River at page 634, noted that the public hearing held by the State of Virginia satisfied the requirements of Federal law, but the crucial factor according to the Court was that "no use was ever made of this hearing that resulted in Federal approval for the roads". It would be a travesty to tranpose a State project into a 'Federal action' project merely because the State has followed its own highway construction procedures which it has intentionally modified to meet the requirements of Federal highway procedures so that there may be procedural uniformity on all of its projects, whether State or Federal.

Even if this Court should acknowledge that at some point eligibility for Federal funding can transpose a State project into a "Federal action" without the actual commitment of funds, an analysis of the cases establishing that principle clearly refutes plaintiffs' contention that the project in question has been or should be so transposed. NEPA clearly does not apply to all highways eligible for Federal funds since every road may be eligible for Federal funds until some act is taken which violates Federal requirements. The entire thrust of LaRaza Unida v. Volpe, supra, and subsequent cases in which it is favorably cited, is that a State may not affirmatively seek the benefits and assistance provided by the Federal government and at the last minute reject Federal funds to avoid complying with burdensome Federal regulations. (377 F. supp. at page 227).

The Court, in LaRaza Unida v. Volpe, supra, adopted "location approval" as the critical step at which a State affirmatively seeks Federal funds, thereby giving the project the status of a "Federal action". It is not merely eligibility at the earliest point of time that determines a project's status as a federal action, but the extent to which the state pursued such eligibility and displayed anticipation for receipt of federal funds and intention to in fact apply for federal financial assistance.

This interpretation was recognized by the Court in the James River case where the Court, at page 634, stated,

> "Notwithstanding the fact that the LaRaza Unida declared a highway project to be Federal early in the planning process, it most assuredly did not hold that a project could be Federal where no Federal participation had ever taken place. This is so even if the possibility existed for securing Federal funds in the future".

In addition, the Court, in James River, while recognizing the principle of LaRaza Unida, supra, specifically stated at Pages 633-4, that it "need not decide whether the Federal imprimatur attached as early as was held in LaRaza Unida."

C. INDEPENDENCE OF THE PORTION OF RELOCATED ROUTE 7 NORTH OF DANBURY FROM THE PORTION OF RELOCATED ROUTE 7 SOUTH OF DANBURY.

The final factor discussed by the Courts in determining whether a State project should be termed a "Federal action" is whether or not there is justification for the segmentation of the project. The cases which have discussed this "project splitting" theory analyze two factors:

a. The independent justification for the project; and

b. The degree to which the Federal and State governments have formed a partnership prior to segmentation.

The first factor is a factual determination. As the Court stated in James River, supra "In order to determine, therefore, when a group of segments should be classified as a single project for purposes of Federal law, a Court must look to a multitude of factors, including the manner in which the roads were planned, their geographical locations and the utility of each in the absence of the other." (359 F. Supp. at pg. 611). Thus the Court in Sierra Club vs. Volpe, supra, found that the segment in question had long been treated as part of an overall highway that the segmentation was in fact sham for the obvious purpose of avoiding NEPA. A similar conclusion was reached by the Court in San Antonio Conservation Co. vs. Texas Highway Department, 446 F. 2d 1013 (5th Cir. 1971). In direct contrast to these cases, the

project before this Court has always been treated as a separate, independent project with its own independent justification. (See supra pages 7-8). The Court below after carefully weighing all the evidence found that "independent justification for the Danbury-New Milford portion is reasonable and not a sham for rationalization." (Opinion Page 12). This independent justification distinguishes the fact at bar from the Sierra Club and the San Antonio cases. See James River, Supra, pages 634 to 636.

Perhaps the most important factor distinguishing the project in question from all of the cases holding a State project to be a "Federal action" where Federal funds have not been committed is the absence of the Federal-State partnership. The justification for the eligibility theory of LaRaza Unida cases and the segmentation theory of the San Antonio cases is that once embarked upon a Federal project a State should not be able to reverse itself in order to avoid Federal procedures and regulations. Since the intention to seek Federal funds is a difficult fact to prove, the Courts have resorted to such factors as location approval, independent justification and Federal-State cooperation to make that determination the crucial factor. The elements of the Federal-State partnership are absent in the case at Bar. Relocated Route 7 from Danbury to New Milford was planned as an independent, separate State funded porject (see Supra pages 7 and 8). It was joined with other portions of relocated Routes 7 and I-84

for convenience. There was never any evidence presented indicating that it was joined with such other projects for the purposes of obtaining or benefitting from Federal Funds. When the portion of relocated Route 7 from Norwalk to Danbury was enjoined by the Court, this segment was separated not to avoid NEPA or other Federal Regulations but because it always was planned as a separate project and needed to be constructed whether or not the remainder of relocated Route 7 was ever built. (Johnson testimony). Even if a portion of Route 7 north of Route I-84 was federally funded, it would be logical pursuant to the procedures set out in PPM 90-1 to have two separate EIS's, one from Norwalk to Danbury and one from Danbury to some other point north of Danbury. This is so because the two highway lengths serve different traffic needs and would have different social, economic, and enviromental effects. (Siccardi affid. Def.'s app. p. 11).

Plaintiffs attempt to obscure the true fact of no federal-State partnership by citing numerous statistical reports, hearings data and I-84 action in 1962-1963, none of which demonstrate the active cooperation needed to establish a federal-state partnership in the project from Danbury to New Milford. The express denial of such partnership voiced in the affidavit of Lester P. Lamm, Assistant Federal Highway Administrator and Executive Director of the Federal Highway Administration, cannot be dismissed and swept aside as valueless in establishing this key factor. (Def's. app. p. 2-3).

D. CUMULATIVE EFFECT OF FACTORS CONSIDERED IN COURT'S OPINION

Judge Newman suggested considering the total effect of the various factors discussed in his opinion in order to reach a conclusion of "Federal action". He lists such factors to be the spurs built in 1962, use of highway planning and research funds, route revision approval, State's eligibility for federal funding and relationship between the Danbury - New Milford and Norwalk - Danbury highways (Opinion p. 13). While the plaintiffs did not raise this issue in the District Court, they eagerly thrust it now upon this court and upon the defendants. Since this point was not raised in the District Court, we fail to see how it merits standing in this appeal. Suffice it to say that the District Court based its final conclusion on this issue upon all the evidence properly placed before it.

IV
CONCLUSION

The State defendants respectfully urge that the District Court's Memorandum of Decision on Plaintiffs' Motion to Extend Injunction be affirmed, for the reasons set forth in this brief and in the Court's Memorandum.

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July 12, 1974

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July 12, 1974

Mr. Daniel Fusaro, Clerk
United States Court of Appeals
Foley Square
New York, New York 10007

Re: Docket No. 74-1730
Citizens for Balanced Environment and Transportation, Inc., et al v.
John A. Volpe, et al

Dear Mr. Fusaro:

Enclosed are ten copies each of the Appellees' Brief on Appeal and Appellees' Appendix on the above-identified appeal.

At the hearing on a motion in this appeal on June 25, the Court granted permission to file typewritten briefs and dispense with the filing of an appendix except for the decision of the District Court being appealed from.

This will also certify that two copies each of the enclosed have been served on Appellants' counsel.

Very truly yours,

Robert K. Killian
Attorney General

By: Clement J. Kichink
Clement J. Kichink
Assistant Attorney General
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CJK:ahk
Enclosures

cc: Haynes N. Johnson, Esquire